

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
EL PASO NATURAL GAS COMPANY,	)	
BEAUNIT CORPORATION, and	)	
BEAUNIT FABRICS CORPORATION,	)	
	)	
Defendants.	)	

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States, and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9607, for recovery of certain costs that have been incurred by the United States in response to a release or threatened release of hazardous substances at and from a facility approximately 1.5 miles west of downtown Statesville, Iredell County, North Carolina, at the intersection of Phoenix Street and West Front Street (the "Site"). The United States also seeks a declaratory judgment pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that

Defendants are liable for certain future costs of removal and remedial action not inconsistent with the National Contingency Plan, 40 C.F.R. § 300, that will be incurred by the United States in connection with the Site.

#### JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose in this District and the release and threatened releases of hazardous substances that gave rise to the United States' claims occurred in this District.

#### DEFENDANTS

4. Defendant El Paso Natural Gas Company ("El Paso") is a Delaware corporation with its principal place of business in El Paso, Texas.

5. Defendant Beaunit Corporation ("Beaunit") is a Delaware corporation.

6. Defendant Beaunit Fabrics Corporation ("Beaunit Fabrics") is a Delaware corporation.

#### GENERAL ALLEGATIONS

7. The Site consists of two parcels: a 15 acre parcel north of a Norfolk-Southern Railroad spur and a 5.5 acre parcel to the

south of the spur. The 15 acre parcel was operated as a textile plant (the "textile plant"), and the 5.5 acre parcel was operated by FCX Corporation as an agricultural chemical formulation plant (the "pesticide plant").

8. From 1955 to April 1977, El Paso, and a predecessor corporation that merged into El Paso in 1967, owned and operated the textile plant. From April 1977 to July 1978, Beaunit owned and operated the textile plant. From July 1978 to June of June 1981, Beaunit Fabrics Corporation owned and operated the textile plant. From June 1981 to 2003, Burlington Industries owned the textile plant. Burlington sold the plant to El Paso in November 2003. Burlington operated the textile plant from June 1981 to 1994.

9. From 1955 until 1981, the operators of the textile plant engaged in the processing of textiles included knitting, dyeing and finishing of textiles. In 1981, Burlington eliminated the dyeing process, but continued to conduct knitting and finishing operations until 1994.

10. Throughout the time that El Paso, Beaunit, and Beaunit Fabrics conducted operations at the textile plant, hazardous substances, including but not limited to volatile organic compounds ("VOCs") such as tetrachloroethylene and trichloroethane, were disposed of at the plant.

11. In 1986, EPA commenced a subsurface investigation at

the pesticide plant. On February 21, 1990, EPA placed the pesticide plant on the National Priorities List ("NPL"). After conducting further subsurface investigation at the pesticide plant from 1991 to 1993, EPA determined that the pesticide plant was contaminated with hazardous substances associated with the pesticide operations as well as VOCs. EPA determined that VOC contamination present at the pesticide plant resulted from the releases of VOCs from the upgradient textile plant.

12. In 1993, EPA expanded the NPL Site to include both the pesticide plant and the textile plant. EPA divided its response actions for the expanded Site into three administrative operable units ("OUs"). The focus of OU1 is remediation of groundwater contamination at the pesticide plant; the focus of OU2 is remediation of soil contamination at the pesticide plant; and the focus of OU3 is remediation of soil and groundwater contamination at the textile plant.

13. From 1993 to 1994, El Paso and Burlington conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the textile plant pursuant to a June 1993 Administrative Order on Consent with EPA.

14. On September 27, 1993, EPA executed a Record of Decision ("ROD") for the remedial action for OU1. The OU1 remedial action provides for, among other things, extraction and treatment of contaminated groundwater at the pesticide plant. On

November 22, 1994, EPA executed a ROD for OU2. The UO2 remedial action provides for, among other things, thermal desorption of contaminated subsurface soil at the pesticide plant. On September 30, 1996, EPA executed a ROD for OU3. The OU3 remedial action provides for, among other things, treatment of the contaminated groundwater at the textile plant using air sparging technology, and treatment of soil contaminated with VOCs at the textile plant using soil vapor extraction technology.

15. On December 18, 1997, the United States commenced an action under Section 107 of CERCLA, 42 U.S.C. § 9607, against El Paso, Beaunit, and Burlington, and simultaneously lodged a consent decree (the "Consent Decree") with the United States District Court for the Western District of North Carolina resolving such claims. This Court entered the Consent Decree on March 29, 1998. In the Consent Decree, the United States covenanted not to sue the Defendants for the costs of the remedial action performed at OU3 and the costs incurred by the United States in overseeing the work. The covenant not to sue, however, does not apply to costs incurred at other parts of the Site or to costs not within the definition of future oversight costs. The United States does not seek in this action any costs that are covered by the covenant not to sue.

16. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

\* \* \*

(2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which hazardous substances were disposed of,

\* \* \*

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

42 U.S.C. § 9607(a).

17. The Site is generally contaminated with the numerous hazardous substances, arsenic, manganese, barium, bis(2-Ethylhexyl) phthalate, carbon tetrachloride, chloroform, 1,1-dichloroethene, cis-1,2-dichloroethene, methylene chloride, 1,2,2-trichloroethane, vinyl chloride, tetrachloroethene, 1,2-dichloropropane, trichloroethane, iron, aluminum, and lead.

18. Hazardous substances have come to be located throughout the Site, including hazardous substances released from the textile plant, and the Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. A release of hazardous substances at or from the Site has occurred. There is a threat of further release of hazardous substances at and from the Site.

20. The textile plant and the pesticide plant are each installations and areas where a hazardous substance has been deposited, stored, disposed of, or otherwise has come to be located, and each plant is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. A release of hazardous substances at or from the textile plant has migrated to the pesticide plant and has commingled with contamination that has been released at or from the pesticide plant. There is a threat of continued release of the commingled hazardous substances, including to local drinking water supplies.

22. To date, the United States has incurred costs of removal or remedial action in response to a release or threatened release of a hazardous substance at or from the Site, including from the textile plant and the pesticide plant. The United States continues to incur response costs, including costs of enforcement.

FIRST CLAIM FOR RELIEF  
(Cost Recovery against El Paso)

23. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 as if fully set forth herein.

24. Defendant El Paso owned and operated a portion of the Site. During the time that El Paso owned and operated a portion of the Site, hazardous substances were disposed of at the Site. There has been and will continue to be a release and a threat of

release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

25. Defendant El Paso owned and operated the textile plant. During the time that El Paso owned and operated this facility hazardous substances were disposed of at the facility. There has been and will continue to be a release and a threat of release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

26. Defendant El Paso is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for unreimbursed costs of removal and remedial action incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan, except for those costs of response that are subject to the covenant not to sue in the Consent Decree.

SECOND CLAIM FOR RELIEF  
(Cost Recovery against Beaunit)

27. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 as if fully set forth herein.

28. Defendant Beaunit owned and operated a portion of the Site. During the time that Beaunit owned and operated a portion of the Site, hazardous substances were disposed of at the Site. There has been and will continue to be a release and a threat of



release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

29. Defendant Beaunit owned and operated the textile plant. During the time that Beaunit owned and operated this facility hazardous substances were disposed of at the facility. There has been and will continue to be a release and a threat of release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

30. Defendant Beaunit is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for unreimbursed costs of removal and remedial action incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan, except for those costs of response that are subject to the covenant not to sue in the Consent Decree.

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THIRD CLAIM FOR RELIEF

(Cost Recovery against Beaunit Fabrics)

31. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 as if fully set forth herein.

32. Defendant Beaunit Fabrics owned and operated a portion of the Site. During the time that Beaunit Fabrics owned and operated a portion of the Site, hazardous substances were disposed of at the Site. There has been and will continue to be

a release and a threat of release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

33. Defendant Beaunit Fabrics owned and operated the textile plant. During the time that Beaunit owned and operated this facility hazardous substances were disposed of at the facility. There has been and will continue to be a release and a threat of release of hazardous substances from such facility, and the release and threat of release has caused the United States to incur costs of responding to the release and threat of release.

34. Defendant Beaunit Fabrics is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for unreimbursed costs of removal and remedial action incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan.

FOURTH CLAIM FOR RELIEF  
(Declaratory Judgment  
against All Defendants)

35. Plaintiff realleges and incorporates by reference paragraphs 1 through 34 as if fully set forth herein.

36. Plaintiff is entitled to entry of a declaratory judgment that the Defendants are jointly and severally liable for future costs of removal and remedial action not covered by a covenant not to sue and incurred in response to a release or

threatened release of a hazardous substance at or from the Site and the textile plant, not inconsistent with the National Contingency Plan.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court:

A. Enter judgment against all Defendants, jointly and severally, in favor of the United States for previously unreimbursed costs of removal and remedial action incurred by the United States in response to the release or threatened release of a hazardous substance at or from the Site and the textile plant, plus interest, unless such costs are the subject of a covenant not to sue;

B. Enter a declaratory judgment against all Defendants and in favor of the United States declaring the Defendants liable, jointly and severally, for costs of removal or remedial action to be incurred by the United States in response to the release or threatened release of a hazardous substance at or from the Site and the textile plant, not inconsistent with the National Contingency Plan, unless such costs are the subject of a covenant not to sue; and

C. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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